



**Sub. H.B. 212**

124th General Assembly  
(As Passed by the General Assembly)

**Reps. Wolpert, G. Smith, Seitz, Willamowski, Kearns, Faber, Gilb, Britton, Rhine, Stapleton, Olan, Jolivette, Evans, Krupinski, Salerno, Husted, Flowers, Widowfield, Clancy, Hughes, Lendrum, Goodman, DeWine, Schmidt, Cates, Reidelbach, Fessler, Carmichael, Latta, Hartnett, Carey, Peterson, Coates, Hagan, Raga, Collier, Niehaus, Calvert, Setzer, Webster, Williams, Callender**

**Sens. Armbruster, Austria, Mumper, Nein, Wachtmann, Spada, Johnson, Harris, White, Robert Gardner, Randy Gardner**

**Effective date: \***

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**ACT SUMMARY**

- Permits assuming insurers, in the event of the insolvency of a ceding insurer, to make reinsurance payments directly to an insured or beneficiary, when such direct payments are specifically provided for in a reinsurance agreement.
- In an insolvency proceeding, permits an assuming insurer to introduce those defenses that it believes are available to the ceding insurer on a pending claim.
- Permits insurers to invest in limited liability company membership interests of insurance, financial, investment, and investment management companies.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

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## CONTENT AND OPERATION

### *Direct payments by assuming insurer to an insured or beneficiary*

(sec. 3901.64(A))

The *Credit for Reinsurance Ceded Law* (sections 3901.61 to 3901.65 of the Revised Code) permits a domestic ceding insurer, defined as an insurer that transfers all or part of the risk it underwrites to an assuming insurer, to take credit for reinsurance ceded as provided in the Law as an asset or as a reduction in liability.<sup>1</sup> The Law, among other things, places a condition on a ceding insurer's receipt of credit for reinsurance ceded. Under this condition, a ceding insurer may take credit for reinsurance ceded *only if* the reinsurance agreement contained in the reinsurance contract, and any agreement providing security for the payment of obligations under the reinsurance agreement, include two specified provisions.

The act modifies this condition by requiring that such agreements provide, "in substance," for the specified provisions. The act also amends the two provisions, as follows:

--Prior law required that reinsurance payments be made by the assuming insurer directly to the domestic ceding insurer, or, in the event of its insolvency or liquidation, to its liquidator or statutory receiver. The act permits direct payment of reinsurance to the insured or beneficiary of the ceded insurance policy in the event of the insolvency of the ceding insurer, *if* the reinsurance contract or other written agreement specifically provides for this alternative.

--Prior law also required that reinsurance be payable by the assuming insurer on the basis of the liability of the domestic ceding insurer under the policy or contract reinsured, without diminution because of the insolvency of the ceding insurer or because a liquidator or statutory receiver has failed to pay all or any portion of any claims. The act clarifies that this provision is to apply only in the event of the insolvency of the ceding insurer.

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<sup>1</sup> This law was initially enacted as part of Sub. S.B. 137 of the 119th General Assembly-- legislation addressing standards related to the accreditation of the Department of Insurance under the Financial Regulation Standards Accreditation Program of the National Association of Insurance Commissioners.

**Direct payments may diminish the reinsurer's obligation to the insurer's estate under certain circumstances**

(sec. 3903.32)

The *Insurers Supervision, Rehabilitation, and Liquidation Act* formerly provided that a reinsurer's obligation to an insolvent ceding insurer's estate was not diminished by payment made directly to an insured or other creditor, except when the reinsurance contract, and any agreement that provided security for the payment of the obligations under the contract, provided for direct coverage of a named insured and the payment was made in discharge of that obligation and the contract or agreement had been approved pursuant to specified provisions of the Revised Code.

The act clarifies that the reference to a "payment made directly to an insured or other creditor" means a payment "by a reinsurer." The act also provides that such direct payments do not diminish the reinsurer's obligation to the insurer's estate "except when the reinsurance contract or other written agreement provides for direct payment of the reinsurance to the insured or beneficiary of the insurance policy in the event of the insolvency of the ceding insurer." This amended language reflects the changes that the act makes to section 3901.64(A), above, with regard to the provisions that must be contained in reinsurance agreements in order for a domestic ceding insurer to take credit for reinsurance ceded.

**Assuming insurers may introduce defenses available to the ceding insurer on a pending claim**

(sec. 3901.64(B))

The act provides for an assuming insurer's introduction of defenses on a claim pending against the insolvent ceding insurer on a policy or contract reinsured with the assuming insurer. It states that, during the pendency of such a claim, an assuming insurer may investigate the claim and interpose in the proceeding on the claim, at its own expense, those defenses that it deems to be available to the insolvent ceding insurer or its liquidator. The expense of the assuming insurer's intervention in the proceeding on the claim may be filed as a claim against the insolvent ceding insurer, to the extent of a proportionate share of the benefit that may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Further, where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to the claim, the expense of the intervention is to be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

Under ongoing law, a reinsurance agreement may require that the liquidator or statutory receiver of an insolvent ceding insurer provide written notice that a

claim is pending against the ceding insurer on the policy or contract reinsured. The act clarifies that the written notice, when provided for, is to be given by the "domiciliary" liquidator or statutory receiver "to the assuming insurer."

**Insurers may invest in certain limited liability company membership interests**

(secs. 3907.14(P)(6) and 3925.08(D)(2))

Ongoing law identifies the permissible investments for the capital, surplus, and accumulations of domestic life insurance companies (sec. 3907.14) and for the accumulated funds and surplus of domestic property and casualty insurance companies (sec. 3925.08). The law formerly did not permit insurers to invest in membership interests of limited liability companies.

Under the act, insurers may invest their capital, surplus, and accumulations in the limited liability company membership interests of insurance, financial, investment, and investment management companies. The investment management companies must be registered with the Securities and Exchange Commission. The act also permits property and casualty insurance companies to invest in the limited liability company membership interests of companies that are organized for, and that limit their operations to, the financing of insurance premiums.

With respect to life insurers, the act sets the maximum amount that may, without the approval of the Superintendent of Insurance, be invested in limited liability company membership interests of insurance, financial, investment, and investment management companies equal to the maximum amount that the insurer may invest in the *stocks* of such companies. Property and casualty insurers may, without the approval of the Superintendent, invest in the stocks or limited liability company membership interests of insurance, financial, investment, investment management, and premium finance companies, *if* the investment in *each such company* does not exceed the amount specified in ongoing law.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	04-10-01	p. 301
Reported, H. Insurance	05-16-01	p. 435
Passed House (99-0)	05-23-01	pp. 447-448
Reported, S. Insurance, Commerce & Labor	06-13-01	p. 656
Passed Senate (33-0)	06-13-01	p. 658

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